



Office of the Mayor and Council  
City of College Park  
7401 Baltimore Avenue, Suite 201  
College Park, Maryland 20740  
Telephone: (240) 487-3501

**NOTICE OF FINAL DECISION  
of the  
MAYOR AND COUNCIL  
of the  
CITY OF COLLEGE PARK**

**Ekaterina Potapova**  
RE: Case No. CEO-2022-01 Name: William Schmegel  
  
Address: 5011 Fox Street, College Park, MD 20740


Enclosed herewith is a copy of the Resolution setting forth the action taken by the Mayor and Council of the City of College Park in this case on the following date:  
June 7, 2022 .

**CERTIFICATE OF SERVICE**

This is to certify that on June 8, 2022 attached Resolution was mailed, postage prepaid, to all persons of record.

**NOTICE**

Any person of record may appeal the Mayor and Council decision within thirty (30) days to the Circuit Court of Prince George's County, 14735 Main Street, Upper Marlboro, MD 20772. Contact the Circuit Court for information on the appeal process at (301) 952-3655.

  
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Janeen S. Miller, CMC  
City Clerk

Copies to: Advisory Planning Commission  
City Attorney  
Applicant  
Parties of Record

PG Co. DER, Permits & Review Section  
M-NCPPC, Development Review Division  
City Public Services Department

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK  
ADOPTING THE RECOMMENDATION OF THE ADVISORY PLANNING  
COMMISSION FOR APPLICATION NUMBER CEO-2022-01 REGARDING  
VARIANCES FROM THE FOLLOWING REQUIREMENTS: PRINCE GEORGE'S  
COUNTY ZONING ORDINANCE, TABLE 27-6603(A), AND CITY CODE 87-23 C., TO  
PERMIT THE INSTALLATION OF A 6-FOOT-HIGH FENCE ALONG UNIMPROVED  
RIGHT-OF-WAY**

- WHEREAS,** the City of College Park ("City"), in accordance with §25-303 of the Land Use Article, Annotated Code of Maryland, has adopted §87-23, "Fences", of the Code of the City of College Park ("City Code"), which establishes certain restrictions on the construction and reconstruction of fences on residential properties, including height and material restrictions on front yard fences; and
- WHEREAS,** pursuant to §15-19 of the City Code, the Advisory Planning Commission ("APC") is authorized to hear appeals from the provisions of Chapter 87, Building Construction, of the City Code; and
- WHEREAS,** the City is authorized by §87-23 J to grant a variance where by reason of an extraordinary situation or condition, the strict application of the Fence Ordinance would result in peculiar and unusual practical difficulty to, or an exceptional or undue hardship upon, the owner of the property; and a variance can be granted without substantial impairment of the intent, purpose and integrity of the Fence Ordinance; and where, if applicable, the variance is consistent with the Design Guidelines adopted for the locally designated Historic District, and the fence for which a variance is requested incorporates openness as much as is practicable, provided that the fence shall not be constructed of chain link unless the material is consistent with the surrounding neighborhood; and
- WHEREAS,** the City has, pursuant to §190-1 *et seq.* of the City Code, and in accordance with Section 27-924 of the Prince George's County Zoning Ordinance ("Zoning Ordinance"), enacted procedural regulations governing any or all of the following: departures from design and landscaping standards, parking and loading standards, sign design standards, and variances for lot size, setback and similar requirements for land within the corporate boundaries of the City, alternative compliance from landscaping requirements, certification, revocation, and revision of nonconforming uses, and minor changes to approved special exceptions; and
- WHEREAS,** the APC is authorized by §190-3 of the City Code to hear requests for variances from the terms of the Zoning Ordinance with respect to lot size, setback, and similar requirements, and to make recommendations to the Mayor and City Council in connection therewith; and
- WHEREAS,** the Prince George's County Code, Table 27-6603 (a) restricts fences in the front or side yard to four feet for corner lots of one acre or less; and

**WHEREAS,** the City is authorized by the Zoning Ordinance to grant an application for a variance where, by reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of the specific parcel of property, the strict application of the Zoning Ordinance would result in peculiar and unusual practical difficulties or an exceptional or undue hardship upon the owner of the property, and a variance can be granted without substantial impairment of the intent, purpose and integrity of the General Plan or Master Plan; and

**WHEREAS,** on March 31, 2022, Ekaterina Potapova and William Schmegel (“Applicants”), submitted an appeal from City Code §87-23, for a three-foot fence height variance and from Prince George’s County Zoning Ordinance, Table 27-6603(a) for a two-foot fence height variance, in order to install a six-foot-height fence along an unimproved right-of-way at their property located at 5011 Fox Street, College Park, Maryland (“Property”); and

**WHEREAS,** on May 5, 2022, the APC conducted a hearing on the merits of the variance, at which time the APC heard testimony and accepted evidence, including the staff report, exhibits, and the staff presentation with respect to whether the subject application meets the standards for granting an appeal set forth in §87-23 J and §190-4 *et seq.* of the City Code.

**WHEREAS,** based upon the evidence and testimony presented, the APC voted 6-0-0 to recommend that the variances be approved; and

**WHEREAS,** the Mayor and Council are authorized by §87-19 and §97-19 of the City Code to accept, deny or modify the recommendation of the APC, or to return the variance application to the Commission to take further testimony or reconsider its recommendation with respect to the variance request, and have reviewed the recommendation of the APC as to the application for a variance, and in particular have reviewed the APC’s findings of fact and conclusions of law; and

**WHEREAS,** no exceptions have been filed.

**NOW THEREFORE,** the Mayor and Council are in agreement with and hereby adopt the findings of fact and conclusions of law of the APC with regard to CEO-2022-01 recommending approval of 6-foot-high fence height along unimproved right-of-way.

### **Section 1 Findings of Fact**

- 1.1 The Property is a rectangular-shaped corner lot, 50-feet wide by 100-feet deep for a total lot size of 5,000 square feet.
- 1.2 The Property has street frontage along Fox Street and unimproved 50<sup>th</sup> Place. Per the City Engineer 50<sup>th</sup> Place is not planned to be improved.
- 1.3 The Property is improved with a 2-story, frame house built in 1934, which predates the Zoning Ordinance and the restrictions concerning corner lots and front yards.



- 1.4 The house fronts on Fox Street.
- 1.5 The surrounding neighborhood is single-family residential.
- 1.6 The Applicants state that a 3-foot-high fence is not tall enough to adequately protect their property.
- 1.7 The unimproved right-of-way tends to create the appearance that the area along 50<sup>th</sup> Place is effectively the back yard of the Property, which is usually a private space.
- 1.8 The proposed 6-foot-high horizontal slat wooden fence with gaps will incorporate openness.
- 1.9 Under both the County Zoning Ordinance and the City Fence Ordinance, a yard abutting an improved or unimproved right-of-way is considered a front yard.

## **Section 2 Conclusions of Law**

### **County Requirements:**

- 2.1 That a specific parcel of land have exceptional narrowness, shallowness or shape, exceptional topographic conditions or other extraordinary situation or condition has not been met.

The extraordinary situation is that 50<sup>th</sup> Place is an unimproved right-of-way, which makes it a front yard of the Property, even though there are no plans to improve it. The house was constructed well before the effective date of the Zoning Ordinance restrictions for which a variance is requested.

- 2.2 The denial of the variance would result in a peculiar and unusual practical difficulty to, or exceptional or undue hardship to the property owner.

The strict application of the Zoning Ordinance will result in a practical difficulty for the Applicants by preventing them from enclosing what is effectively their rear yard with a 6-foot-tall fence on all sides. Having a 3-foot fence on one side only will impair the practical function and aesthetic of the rear yard fence.

- 2.3 Granting this variance will not adversely impact the intent, purpose, and integrity of the applicable county general plan or county master plan and the City's Fence Ordinance.

The Fence Ordinance and County plans were enacted to preserve and protect the character of residential neighborhoods, to support open front yards, and to increase safety by allowing access to emergency personnel. Because there are no plans for the unimproved right-of-way, which abuts the effective back yard of the Property, the increased height of the fence will not affect the residential neighborhood, or negatively impact front yards or emergency access.

### **Additional City Requirements:**

- 2.4 Granting the variance will not impair the intent, purpose or integrity of the Fence Ordinance.

The proposed 6-foot high, wooden fence is compatible with the character of the neighborhood and impacts only the apparent back yard

- 2.5 The variance is consistent with the design guidelines adopted for the historic district, if applicable.

The property is not in a locally designated Historic District.

- 2.6 The fence for which an appeal is requested incorporates openness and visibility as much as is practicable, provided however, that it shall not be constructed of chain link unless this material is consistent with the surrounding neighborhood.

The proposed fence incorporates openness and visibility as much as is practical.

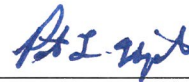
**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the City of College Park to approve CEO-2022-01 for a 2-foot fence height variance from the County Zoning Ordinance and 3-foot fence height variance from the City Fence Ordinance to allow a 6-foot-high fence along approximately 50 feet of the unimproved right-of-way of 50<sup>th</sup> Place.

**ADOPTED**, by the Mayor and Council of the City of College Park at a regular meeting on the 7<sup>th</sup> day of June 2022.

CITY OF COLLEGE PARK

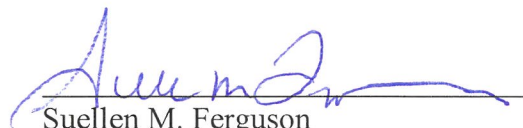


Janeen S. Miller, CMC  
City Clerk



Patrick L. Wojahn, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY



Suellen M. Ferguson  
City Attorney